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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

United States of America,)
Plaintiff,) CR 09-0734-003-TUC-JMR (DTF)
v.)
Richard Ryan Romero)
Defendant.)
RESPONSE TO DEFENDANT'S
MOTION TO SEVER COUNTS
OR DEFENDANTS

Plaintiff, United States of America, by its attorneys, DENNIS K. BURKE, United States Attorney and ANGELA W. WOOLRIDGE, Assistant United States Attorney, hereby responds to the defendant's Motion to Sever Counts or Defendants in the above captioned matter.

FACTS AND PROCEDURAL HISTORY

On June 7, 2007, Pima County Sheriff's Department deputies observed two vehicles stopped at the intersection of Manville and Old West Roads in Tucson, Arizona. Both of the vehicles had their left turn signals on, but neither attempted to turn even though there was no other traffic on the road to prevent them from proceeding. As Deputy Jelineo drove toward the vehicles, one of the vehicles quickly made a u-turn in front of the deputy and drove away at a high rate of speed, crossing over both the double yellow and white fog lines and kicking up dirt and rocks. Deputy Jelineo followed the vehicle to a driveway at 12310 West Manville

1 Road. The driver of the vehicle, who was later identified as the defendant, Richard Ryan
2 Romero, exited the vehicle and threw his car keys away from the vehicle. The defendant then
3 approached Deputy Jelineo's vehicle and began yelling that the deputies should not be on the
4 property. Deputy Jelineo confirmed that the defendant's driver's license was suspended, and
5 placed the defendant under arrest for driving on a suspended license and reckless driving.

6 While outside of the residence, deputies observed a strong odor of unburnt marijuana
7 emanating from inside a trailer at the residence. Deputy Ahern responded with a drug sniffing
8 canine, who alerted to the presence of narcotics both in the defendant's vehicle and the trailer.
9 The defendant had \$125 in cash in his front pants pocket, and Deputy Jelineo detected a strong
10 odor of marijuana coming from the cash.

11 Co-defendant Lance Wayne Roberson was present inside the trailer and stated that
12 he had been residing there as well. It was determined that the residence belonged to co-
13 defendant Jack Martin Vose, who was not present at the time but also resided at the residence.

14 Deputies obtained and executed a search warrant at the residence. Pursuant to the
15 search warrant, 871 pounds of marijuana and 63 firearms were discovered inside the trailer and
16 seized. Indicia that the defendant had been residing at the residence, including court
17 documents and other paperwork in the defendant's name, was found in one of the bedrooms.
18 In the same bedroom, small bags of marijuana, a small bag of a white crystal substance, and
19 a digital scale were found inside a safe that also contained paperwork belonging to the
20 defendant. A video surveillance system for the property was connected to a television set in
21 this bedroom, which was on at the time of the search.

22 On April 29, 2009, the defendant and co-defendants Vose and Roberson were all
23 indicted on charges of conspiracy to possess with intent to distribute marijuana and possession
24 with intent to distribute marijuana. Co-defendant Vose was also indicted on charges of
25 possession of a firearm by a convicted felon, possession of a firearm in furtherance of a drug
26 trafficking offense, and possession of an unregistered firearm.

1 The defendant now files his Motion to Sever Counts or Defendants, claiming that
2 he is misjoined with co-defendant Vose. The defendant is incorrect, and his Motion should
3 be denied.

MEMORANDUM OF LAW

I. SEVERANCE IS NOT APPROPRIATE IN THIS MATTER

6 Rule 14 of the Federal Rules of Criminal Procedure provides that the court may grant
7 a severance if a defendant is prejudiced by a joinder of offenses or of defendants. “[J]oinder
8 is the rule rather than the exception.” *United States v. Armstrong*, 621 F.2d 951, 954 (9th Cir.
9 1980). “Generally speaking, defendants jointly charged are to be jointly tried.” *United States*
10 *v. Escalante*, 637 F.2d 1197, 1201 (9th Cir.) cert. denied, 449 U.S. 856 (1980), citing *United*
11 *States v. Gay*, 567 F.2d 916, 919 (9th Cir.), cert. denied, 435 U.S. 999 (1978).

12 The defendant is properly joined with co-defendant Vose. Both of the charges
13 against the defendant are also charged against co-defendant Vose. Count One charges that the
14 defendant and co-defendants Vose and Roberson were co-conspirators in their narcotics
15 offenses. Count Two charges the defendant and co-defendants Vose and Roberson with the
16 offense that was the object of their conspiracy. A logical relationship necessarily exists
17 between the defendant and co-defendants with respect to the narcotics offenses, as there was
18 a conspiracy among them to commit the offenses and that conspiracy is a necessary portion
19 of the proof for both narcotics charges.

The defendant claims that joinder is improper because there is no logical relationship between the narcotics offenses with which he and both co-defendants are charged, and the firearms offenses with which co-defendant Vose is charged. However, even in making such an argument, the defendant acknowledges that one of the firearms offenses, Count Four of the Indictment, charges possession of a firearm in furtherance of a drug trafficking offense, in violation of 18 U.S.C. § 924(c). While the defendant is not charged with any firearms offense, the firearms in this matter are related to the narcotics offenses, and that relationship is an

1 element of Count Four. The offenses occurred on the same date, arise from the same series
2 of acts, and are logically related. Therefore, the narcotics and firearms offenses are properly
3 joined.

4 The defendant claims that the as to the properly joined narcotics offenses, the
5 evidence against him is slight as compared to that against co-defendant Vose. The defendant
6 is incorrect. Both the defendant and co-defendant Vose had been residing at the residence.
7 While co-defendant Vose was not present at the residence when the marijuana was discovered
8 by law enforcement, the defendant was present. Personal belongings of both the defendant
9 and co-defendant Vose were found inside the trailer. Contrary to the defendant's claim that
10 there is no evidence of marijuana associated with the bedroom he occupied, bags of marijuana
11 and a digital scale were in fact found in that bedroom inside a safe that also contained
12 paperwork belonging to the defendant. The odor of marijuana coming from inside the trailer
13 was so strong that it was noticeable outside of the residence, as well as throughout the inside
14 of the trailer. Furthermore, the defendant's vehicle and the cash in his pocket also emitted an
15 odor of marijuana.

16 Even if the amount of evidence against co-defendant Vose was greater than that
17 against the defendant, this would not require severance. While a great disparity in the amount
18 of evidence introduced against joined defendants may be grounds for severance, "a defendant
19 is not entitled to a severance merely because the evidence against a codefendant is more
20 damaging than the evidence against him." *United States v. Monks*, 774 F.2d 945, 949 (9th Cir.
21 1985), citing *United States v. Gaines*, 563 F.2d 1352, 1355 (9th Cir. 1977); *United States v.*
22 *Douglass*, 780 F.2d 1472, 1479 (9th Cir. 1986). The "primary consideration is whether 'the
23 jury can reasonably be expected to compartmentalize the evidence as it relates to separate
24 defendants.'" *Id.*, citing *Escalante*, 637 F.2d at 1201; *Gaines*, 563 F.2d at 1355. Even when
25 the great majority of the evidence relates only to other defendants, the court's instructions to
26 the jury can eliminate the need for severance. *Monks*, 774 F.2d at 949; *Douglass*, 780 at 1479.

1 "The prejudicial effect of evidence relating to the guilt of codefendants is generally held to be
2 neutralized by careful instruction by the trial judge. *Escalante*, 637 F.2d at 1201. Where the
3 evidence is straightforward and relatively easy to follow, as it is in this case, a jury instruction
4 that evidence against one defendant should be considered only against that defendant is
5 sufficient to overcome the potential for prejudice. *Monks*, 774 F.2d at 949.

6 The defendant argues that he would be prejudiced by the introduction at trial of
7 evidence of the firearms that co-defendant Vose is charged with possessing in this case. The
8 defendant is incorrect. First, unlike marijuana, firearms are not inherently unlawful to possess.
9 Co-defendant Vose's status as a convicted felon, his possession of the firearms in furtherance
10 of his drug trafficking crimes, and his possession of an unregistered firearm, make his actions
11 illegal. However, none of these actions are imputed to the defendant. Because a jury would
12 not hear any evidence to suggest that the defendant himself was a prohibited possessor,
13 possessed a firearms in furtherance of his drug trafficking crimes, or possessed an unregistered
14 firearm, no negative connotation would be given to the defendant's proximity to the firearms
15 or his association with co-defendant. Therefore, the evidence of the firearms to be introduced
16 against co-defendant Vose would not prejudice the defendant.

17 Second, there is no reason a jury could not reasonably be expected to
18 compartmentalize the evidence of co-defendant Vose's firearms offenses from the evidence
19 of the narcotics offenses. The defendant claims all of the firearms were in an area of the trailer
20 separate from his bedroom and there is no evidence that he had access to any of the firearms.
21 Therefore, according to the defendant's contention, the evidence regarding the firearms is
22 physically – as well as conceptually – compartmentalized. A jury instruction that the evidence
23 regarding the firearms should be considered only against co-defendant Vose would overcome
24 any potential for prejudice to the defendant.

25
26 / / /

CONCLUSION

The defendant is properly joined with co-defendant Vose. The defendant and co-defendants Vose and Roberson are charged as co-conspirators in their narcotics trafficking offenses. The evidence of co-defendant Vose's firearms offenses is not prejudicial to the defendant, and any potential prejudice can easily be eliminated by an instruction to the jury. For these reasons, the government respectfully requests that the defendant's Motion to Sever Counts or Defendants be denied.

Respectfully submitted this 13th day of November, 2009.

DENNIS K. BURKE
United States Attorney
District of Arizona

s/ Angela W. Woolridge

ANGELA W. WOOLRIDGE
Assistant U.S. Attorney

Copy of the foregoing served electronically or by other means this 13th day of November, 2009, to:

Richard Jones, Esq.
Attorney for defendant Romero